

1 DRATH, CLIFFORD, MURPHY & HAGEN, LLP
2 JOHN M. DRATH (State Bar No. 045031)
3 RAY Z. BACERDO (State Bar No. 139221)
4 1999 Harrison Street, Suite 700
Oakland, California 94612-3517
Telephone: (510) 287-4000
Facsimile: (510) 287-4050

5 Attorneys for Defendant
6 UNITED STATES STEEL CORPORATION

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10
11

12 MARGARET McCUE, as Wrongful Death
13 Heir, and as Successor-in-Interest to
14 STANLEY McCUE, Deceased; and
STEPHANIE FINCH and JEFFERY
15 McCUE, as Legal Heirs of STANLEY
McCUE, Deceased, JOANN VALLADON,
16 as Wrongful Death Heir, and as Successor-
in-Interest to GEORGE VALLADON,
Deceased; and BRAD VALLADON,
17 JOYCE SISSOM, TERRY VALLADON, as
Legal Heirs of GEORGE VALLADON,
18 Deceased, MARGARET LINDSEY, as
Wrongful Death Heir, and as Successor-in-
19 Interest to ROBERT LINDSEY, Deceased;
and CYNTHIA LINDSEY TATE and
20 MARCUS LINDSEY, as Legal Heirs of
ROBERT LINDSEY, Deceased,

21 Plaintiffs,

22 vs.

23 GENERAL ECLECTRIC COMPANY,
24 KAISER VENTURES LLC, NEWPORT
25 NEWS SHIPBUILDING AND DRY DOCK
COMPANY, UNITED STATES STEEL
26 CORPORATION,
Defendants.

Case No.: CV 08 3181 EMC

UNITED STATES STEEL
CORPORATION'S ANSWER TO
COMPLAINT

**I.
PARTIES**

1
2
3 1. Paragraph 1 of the Complaint identifies the plaintiffs in this lawsuit and no
4 answer is required of Answering Defendant. Answering Defendant is without knowledge or
5 information as to allegations concerning plaintiffs' relationships to the decedents.

6 2. Paragraph 2 of the Complaint identifies the decedents on whose behalf the suit
7 is being brought, including the date of death, and as to these allegations no answer is required
8 of Answering Defendant. However, Answering defendant denies that the decedent's injuries
9 were caused or contributed to by Answering Defendant.

10 3. Paragraph 3 of the Complaint identifies the plaintiffs in this lawsuit and no
11 answer is required of Answering Defendant. Answering Defendant is without knowledge or
12 information as to allegations concerning plaintiffs' relationships to the decedents.

13 4. In response to paragraph 4 of the Complaint, Answering defendant denies that
14 the decedents' alleged diseases were as a result of exposure to the decedent to any product
15 that was manufactured, sold, or distributed by Answering Defendant.

16 5. In response to paragraph 5 of the Complaint, this Answering Defendant denies
17 the pathogenesis of the decedents' disease as alleged therein and Exhibit A of the Complaint.

18 6. In response to paragraph 6 of the Complaint, this Answering Defendant denies
19 the allegations therein.

20 7. In response to paragraph 7 of the Complaint, this Answering Defendant denies
21 the allegations therein.

22 8. In response to paragraph 8 of the Complaint, this Answering Defendant lacks
23 information and belief as to the legal status of other defendants. This Answering Defendant
24 admits that it is a corporation authorized to conduct business in California as alleged in
25 paragraph 8.

26 ///

27 ///

28 ///

II.
JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

9. In response to paragraph 9 of the Complaint, this Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations insofar as the State citizenship of each of the plaintiffs, and as to the place of incorporation and principal place of business of other defendants. This Answering Defendants denies the allegations that this Court has original jurisdiction to the extent the Judicial Panel on Multi-District Litigation entered an order transferring all asbestos cases pending in federal courts to the United States District Court, Eastern District of Pennsylvania, for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407 ("MDL Transfer Statute"), and to the extent the MDL Statute applies to "tag-along actions." This Answering Defendants admits that it is a corporation incorporated under the laws of and has its principal place of business in the State of Pennsylvania.

10. This Answering Defendants denies the allegations that venue is proper herein to the extent the Judicial Panel on Multi-District Litigation entered an order transferring all asbestos cases pending in federal courts to the United States District Court, Eastern District of Pennsylvania, for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407 ("MDL Transfer Statute"), and to the extent the MDL Statute applies to "tag-along actions."

III.
CAUSE OF ACTION
FIRST CAUSE OF ACTION
(Negligence - Survival)

11. Answering Defendant denies the allegations contained in paragraph 11 insofar as the allegations pertain to Answering Defendant or its alternate entities.

12. Answering Defendant denies the allegations contained in paragraph 12 insofar as the allegations pertain to Answering Defendant or its alternate entities.

13. Answering Defendant denies the allegations contained in paragraph 13 insofar as the allegations pertain to Answering Defendant or its alternate entities.

1 14. Answering Defendant denies the allegations contained in paragraph 14 insofar
2 as the allegations pertain to Answering Defendant or its alternate entities.

3 15. Answering Defendant denies the allegations contained in paragraph 15 insofar
4 as the allegations pertain to Answering Defendant or its alternate entities.

5 16. Answering Defendant denies the allegations contained in paragraph 16 and
6 Exhibit A as incorporated in the Complaint, insofar as the allegations pertain to Answering
7 Defendant or its alternate entities.

8 17. Answering Defendant denies the allegations contained in paragraph 17 and
9 Exhibit A as incorporated in the Complaint, insofar as the allegations pertain to Answering
10 Defendant or its alternate entities.

11 18. Answering Defendant denies the allegations contained in paragraph 18 insofar
12 as the allegations pertain to Answering Defendant or its alternate entities.

13 19. Answering Defendant denies the allegations contained in paragraph 19 insofar
14 as the allegations pertain to Answering Defendant or its alternate entities. Answering
15 Defendant further denies that it caused or contributed to plaintiffs' decedents' injuries or
16 damages.

17 20. Answering Defendant denies the allegations contained in paragraph 20 insofar
18 as the allegations pertain to Answering Defendant or its alternate entities. Answering
19 Defendant further denies that it caused or contributed to plaintiffs' decedents' injuries or
20 damages.

21 21. Answering Defendant denies the allegations contained in paragraph 21 insofar
22 as the allegations pertain to Answering Defendant or its alternate entities. Answering
23 Defendant further denies that it caused or contributed to plaintiffs' decedents' injuries or
24 damages.

25 22. Answering Defendant denies the allegations contained in paragraph 22 insofar
26 as the allegations pertain to Answering Defendant or its alternate entities. Answering
27 Defendant further denies that it caused or contributed to plaintiffs' decedents' injuries or
28 damages.

24. Answering Defendant denies the allegations contained in paragraph 24 insofar as the allegations pertain to Answering Defendant or its alternate entities. Answering Defendant further denies that it caused or contributed to plaintiffs' decedents' injuries or damages.

25. Answering Defendant denies the allegations contained in paragraph 25 insofar as the allegations pertain to Answering Defendant or its alternate entities.

26. Answering Defendant denies the allegations contained in paragraph 26 insofar as the allegations pertain to Answering Defendant or its alternate entities.

27. Answering Defendant denies the allegations contained in paragraph 27 insofar as the allegations pertain to Answering Defendant or its alternate entities.

28. Answering Defendant incorporates herein by reference, as though fully set forth herein, each of its responses to each paragraph of the First Cause of Action.

29. Answering Defendant denies the allegations contained in paragraph 29 insofar as the allegations pertain to Answering Defendant or its alternate entities.

30. Answering Defendant denies the allegations contained in paragraph 30 insofar as the allegations pertain to Answering Defendant or its alternate entities.

31. Answering Defendant denies the allegations contained in paragraph 31 insofar as the allegations pertain to Answering Defendant or its alternate entities.

32. Answering Defendant denies the allegations contained in paragraph 32 insofar as the allegations pertain to Answering Defendant or its alternate entities.

33. Answering Defendant denies the allegations contained in paragraph 33 insofar as the allegations pertain to Answering Defendant or its alternate entities.

1 34. Answering Defendant denies the allegations contained in paragraph 34
2 insofar as the allegations pertain to Answering Defendant or its alternate entities.

3 35. Answering Defendant denies the allegations contained in paragraph 35
4 insofar as the allegations pertain to Answering Defendant or its alternate entities.

5 36. Answering Defendant denies the allegations contained in paragraph 36
6 insofar as the allegations pertain to Answering Defendant or its alternate entities.

7 37. Answering Defendant denies the allegations contained in paragraph 37
8 insofar as the allegations pertain to Answering Defendant or its alternate entities.

9 38. Answering Defendant denies the allegations contained in paragraph 38
10 insofar as the allegations pertain to Answering Defendant or its alternate entities.

11
12 THIRD CAUSE OF ACTION
 (Negligence - Wrongful Death)

13 39. Answering Defendant incorporates herein by reference, as though fully set forth
14 herein, each of its responses to each paragraph of the First and Second Causes of Action.

15 40. Answering Defendant is without knowledge or information as to allegations
16 concerning plaintiffs' relationships to the decedents.

17 41. Answering Defendant is without knowledge or information as to allegations
18 concerning plaintiffs' relationships to the decedents and/or they constitute all of the surviving
19 heirs.

20 42. Answering Defendant denies the allegations contained in paragraph 42 insofar
21 as the allegations pertain to Answering Defendant or its alternate entities.

22 43. Answering Defendant is without knowledge or information as to allegations in
23 paragraph 43 concerning plaintiffs' relationships to the decedents.

24 44. Answering Defendant denies the allegations contained in paragraph 44 insofar
25 as the allegations pertain to Answering Defendant or its alternate entities.

26 ///

27 ///

28 ///

1 45. Answering Defendant denies the allegations contained in paragraph 45 insofar
2 as the allegations pertain to Answering Defendant or its alternate entities. Answering
3 Defendant is without knowledge or information as to allegations concerning funeral expenses
4 incurred by decedents' heirs.

5
6 **FOURTH CAUSE OF ACTION**
 (Products Liability - Wrongful Death)

7 46. Answering Defendant incorporates herein by reference, as though fully set forth
8 herein, each of its responses to each paragraph of the First, Second and Third Causes of
9 Action.

10 47. Answering Defendant denies the allegations contained in paragraph 47 insofar
11 as the allegations pertain to Answering Defendant or its alternate entities.

12
13 **IV.**
 DAMAGES AND PRAYERS

14
15 Answering Defendant denies that Plaintiffs are entitled to damages sought in the Prayer for
16 Damages as the allegations pertain to Answering Defendant or its alternate entities.

17 **AFFIRMATIVE DEFENSES**

18 1. The complaint, and each of its causes of action, fails to state facts sufficient to
19 constitute a cause of action against USS.

20 2. USS contests plaintiffs' allegation that this Court has original jurisdiction to
21 the extent the Judicial Panel on Multi-District Litigation entered an order transferring all
22 asbestos cases pending in federal courts to the United States District Court, Eastern District
23 of Pennsylvania, for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C.
24 §1407 ("MDL Transfer Statute"), and to the extent the MDL Statute applies to "tag-along
25 actions."

26 3. Plaintiffs' decedents' alleged injuries, losses or damages, if any, were
27 aggravated by his failure to use reasonable diligence to mitigate them.

28 ///

1 4. Plaintiffs' decedents' injuries, if and to the extent they occurred, which
2 occurrence is expressly denied, were caused solely by his recklessness, carelessness, and/or
3 negligence.

4 5. Plaintiffs' decedents' illnesses and injuries, if and to the extent they occurred,
5 which occurrence is expressly denied, were contributed to by his own recklessness,
6 carelessness and/or negligence. Plaintiffs' recovery from USS, if any, must be reduced by
7 plaintiff's decedents' comparative fault.

8 6. Plaintiffs' claims are barred by the applicable statutes of limitations, including
9 California Code of Civil Procedure §§312, 338(1), 338(4), 339(1), 340(1), 340(3), 340.2, 343,
10 353 and 353(a); California Commercial Code §2725; and/or subject to discretionary and/or
11 mandatory dismissal pursuant to California Code of Civil Procedure §§583.210; 583.250;
12 583.410; and/or by the doctrine of laches.

13 7. Plaintiffs' decedents' illnesses and injuries, if and to the extent they occurred,
14 which occurrence is expressly denied, pre-existed or were suffered after the alleged
15 relationship between plaintiff and USS, and said injuries or illnesses were neither caused nor
16 exacerbated by said relationship.

17 8. Plaintiffs' decedents' illnesses and injuries, if and to the extent they occurred,
18 which occurrence is expressly denied, were caused solely by the faults of third parties for
19 which USS is not responsible.

20 9. Plaintiffs' decedents' illnesses and injuries, if and to the extent they occurred,
21 which occurrence is expressly denied, were contributed to by the faults of third parties for
22 which AMI is not responsible.

23 10. Plaintiffs' claims are barred by the applicable principles of waiver, unclean
24 hands, and estoppel.

25 11. This action, and plaintiffs' claims in it, are barred by the provisions of
26 California Labor Code §§3300 *et seq.* and 3600 *et seq.*; and this court, accordingly, lacks
27 subject matter jurisdiction as to this action.

28 ///

1 12. USS alleges that if the plaintiff is entitled to a joint judgment against USS and
2 the remaining defendants, and each of them, USS prays this court order each of the judgment
3 debtors to pay to the plaintiff their proportionate share of the joint judgment, the judgment
4 debtor's proportionate share having been determined by the trier of fact; and if USS is
5 required to pay to the plaintiff a disproportionate share of the judgment, USS prays leave of
6 this court to seek contribution

7 by motion against any other judgment debtor not paying the proportionate share allocated
8 to any such defendant by the trier of fact.

9 13. USS alleges that plaintiffs' decedents assumed the risk of any injury and/or
10 damages resulting from the matters set forth in the complaint, and that said assumption of risk
11 by plaintiff was a proximate and/or legal cause of the injuries and/or damages sustained by
12 plaintiff, if any there were.

13 14. USS alleges that plaintiffs' decedents acknowledged, ratified and consented to,
14 and acquiesced in the alleged acts or omissions, if any, USS, thus barring plaintiffs from any
15 relief as prayed for herein.

16 15. USS alleges that as a result of the matters alleged, plaintiffs' decedents have
17 received, and will continue to receive, workers' compensation benefits from his employer or
18 its insurance carrier, or both, in an amount not yet ascertained and determined; that the total
19 amount of said payments is not yet known to USS and leave of court will be sought to amend
20 this answer when the amount is determined; that by virtue of California Labor Code §3850,
21 *et seq.*, said employer and its insurance carrier are subrogated to the rights of the plaintiff for
22 any and all monies plaintiff may have received from defendants up to the amount paid to said
23 plaintiff; that the plaintiff's damages arose as a direct and proximate result of the negligence
24 and carelessness of plaintiff's said employer, and plaintiff's said employer and its insurance
25 carrier are not entitled to reimbursement for monies paid or to be paid to plaintiff; and in the
26 event of any judgment in favor of plaintiff and against USS, it should be reduced by the
27 amount paid or the amount to be paid plaintiff by said employer or its insurance carrier.

28 ///

1 16. USS alleges that all activities of USS alleged in the complaint conform to
2 statutes, governmental regulations and industry standards based upon the state of knowledge
3 existing at the time alleged in the complaint.

4 17. USS alleges that the injuries and damages, if any, alleged by plaintiff in his
5 complaint, were proximately caused by the idiosyncrasy of plaintiff's bodily composition and,
6 consequentially, unforeseeable allergic reaction to the products, chemicals and compounds
7 referred to in plaintiff's complaint.

8 18. USS alleges that any injuries resulting from the use of the products, chemicals
9 and compounds referred to in plaintiff's complaint, which injuries are hereby expressly
10 denied, were not

11 foreseeable to USS given the state of knowledge and state-of-the-art at the time of the
12 alleged injuries.

13 19. Plaintiff's claims for punitive damages violates USS' right to due process and
14 equal protection as guaranteed by the Fourteenth Amendment to the United States
15 Constitution and Article I, Section 7, of the California Constitution in that:

16 a. neither California Civil Code §3294 nor any other provision of California
17 law provides an adequate or meaningful standard for determining the nature of conduct upon
18 which an award of punitive damages may be based or for determining or reviewing the
19 amount of punitive damage award;

20 b. neither California Civil Code §3294, nor any other provision of
21 California law provides adequate procedural safeguards for the imposition of punitive
22 damages, including, but not limited to,

23 i. imposing such damages only upon the presentation of evidence
24 beyond a reasonable doubt;

25 ii. protecting the defendant's privilege against self-incrimination;
26 and

27 iii. providing for a unanimous jury verdict as to the punitive
28 damages portion of any adverse judgment.

1 20. USS alleges that the injuries and/or damages alleged by plaintiffs' decedents
2 were directly and proximately caused or contributed to by the tortious acts and/or omissions
3 of third parties over whom AMI had no control nor which AMI had any duty to control.

4 21. USS alleges that plaintiff's claims are barred by his inability or failure to join
5 as parties all persons and/or entities necessary and proper for the fair adjudication this action.

6 22. USS alleges that venue herein is improper as to it.

7 23. USS alleges that the jobs at worksites on which plaintiffs' decedents worked
8 were controlled by entities other than USS; if plaintiff ever worked on A USS' premises,
9 which USS expressly denies, USS lacked control over his worksite.

10 24. USS alleges that the complaint is not brought in good faith, and defendant is
11 entitled to reasonable expenses, including attorneys' fees pursuant to California Code of Civil
12 Procedure §128.5.

13 25. USS alleges that all alleged USS products were furnished according to contracts
14 or government and/or purchase specifications, and USS is not liable for any resulting injuries
15 by materials that conformed to such specifications.

16 26. USS alleges that it is entitled to the full benefits and protections provided under
17 Civil Code §1431.1 *et seq.*, otherwise entitled the Fair Responsibility Act of 1986.

18 27. USS alleges that plaintiffs decedents' employers were, and are, sophisticated
19 users and knew independently, or should have known, of any danger or hazard associated with
20 the use of a product containing asbestos and of exposure to high levels of dust of any sort.
21 Defendant further alleges that plaintiff's decedents' employers failed to protect plaintiff from
22 the danger or hazard associated with the use of asbestos-containing products, resulting in
23 alleged damages due to plaintiff and plaintiff's employers' act or omission and failure to act
24 as sophisticated users of such products.

25 28. USS alleges that at all times and places mentioned in the complaint, plaintiffs'
26 decedents and/or other persons used this answering defendant's products, if indeed any were
27 used, in an unreasonable manner, not reasonably foreseeable to this defendant, and for a
28 purpose for which the products were not intended, manufactured, or designed. Plaintiffs

1 injuries and damages, if any, were, therefore, directly and proximately caused by plaintiff's
2 misuse and abuse of such products.

3 29. USS alleges that plaintiffs lack standing to bring an action for wrongful death.

4 30. Because of the generality of the allegations in the Complaint, USS reserves the
5 right to amend its answer and affirmative defenses if investigation and discovery and further
6 information should warrant such an amendment, and further, to assert any applicable matters
7 of law during the pendency of this action.

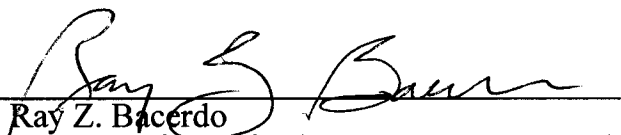
8
9 WHEREFORE, defendant prays that plaintiffs take nothing by way of the
10 complaint on file herein, and that defendant recover its costs and such other and further relief
11 as the court deems proper.

12
13 **JURY DEMAND**

14 Defendant hereby demands trial by jury of all issues of this cause.

15
16 DATED: August 18, 2008

DRATH, CLIFFORD, MURPHY & HAGEN, LLP

17
18 By 
19 Ray Z. Bacerdo
20 Attorneys for Defendant UNITED STATES
21 STEEL CORPORATION
22
23
24
25
26
27
28

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of eighteen (18) years and not a party to the within action.

My business address is 1999 Harrison Street, Suite 700, Oakland, California.

On August 18, 2008 I served the within:

UNITED STATES STEEL CORPORATIONS ANSWER TO COMPLAINT

on all interested parties in said action, addressed as follows.

Alan R. Brayton
David R. Donadio
Brayton Purcell LLP
222 Rush Landing Road
Novato, CA 94948
P: 415-898-1555
F: 4152-898-1247
DDonadio@braytonlaw.com
Attorneys for PLAINTIFFS

Derek S. Johnson
Sedgwick Detert Moran & Arnold
One Market Plaza
Steuart Tower, 8th Floor
San Francisco, CA 94105
P: 415-781-7900 x 1569
F: 415-781-2635
derek.johnson@sdma.com
Attorneys for GENERAL ELECTRIC COMPANY,
KAISER VENTURES LLC

Nairi Chakalian
Daniel J. Kelly
Haight Brown and Bonsteel LLP
71 Stevenson Street, 20th Floor
San Francisco, CA 94105
dkelly@hbblaw.com; jybarra@hbblaw.com
Attorneys for NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY

Jeremy D. Huie
BASSI, MARTINI, EDLIN & BLUM LLP
351 California Street, Suite 200
San Francisco, CA 94104
jhuie@bmeblaw.com
Counsel for KAISER VENTURES LLC

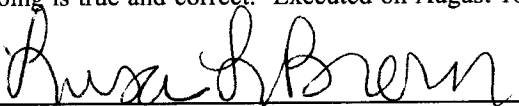
*** MAIL:** By placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Post Office in Oakland, California. I am readily familiar with the firm's practice of collection and processing correspondence/documents for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party or parties served that service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of depositing for mailing.

FAX: By causing a true copy to be transmitted via facsimile to the addressee(s) noted above at the facsimile number shown.

E-MAIL Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

*** ELECTRONIC:** Pursuant to court order, I submitted said document electronically to ECF to be posted to the website, and notice was given to all parties that the document has been served.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 18, 2008, at Oakland, California.



LISA L. BROWN